

108TH CONGRESS  
1ST SESSION

# S. 146

To amend titles 10 and 18, United States Code, to protect unborn victims of violence.

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 13, 2003

Mr. DEWINE (for himself, Mr. GRAHAM of South Carolina, Mr. VOINOVICH, Mr. BROWNBACK, Mr. ENSIGN, Mr. ENZI, Mr. INHOFE, Mr. NICKLES, Mr. SANTORUM, and Mr. FITZGERALD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To amend titles 10 and 18, United States Code, to protect unborn victims of violence.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unborn Victims of Vio-  
5 lence Act of 2003”.

### 6 **SEC. 2. PROTECTION OF UNBORN CHILDREN.**

7 (a) IN GENERAL.—Title 18, United States Code, is  
8 amended by inserting after chapter 90 the following:

1       **“CHAPTER 90A—PROTECTION OF UNBORN**  
 2                               **CHILDREN**

“Sec.

“1841. Causing death of or bodily injury to unborn child.

3       **“§ 1841. Causing death of or bodily injury to unborn**  
 4                               **child**

5       “(a)(1) Any person who engages in conduct that vio-  
 6       lates any of the provisions of law listed in subsection (b)  
 7       and thereby causes the death of, or bodily injury (as de-  
 8       fined in section 1365) to, a child, who is in utero at the  
 9       time the conduct takes place, is guilty of a separate of-  
 10      fense under this section.

11      “(2)(A) Except as otherwise provided in this para-  
 12      graph, the punishment for that separate offense is the  
 13      same as the punishment provided for that conduct under  
 14      Federal law had that injury or death occurred to the un-  
 15      born child’s mother.

16      “(B) An offense under this section does not require  
 17      proof that—

18               “(i) the person engaging in the conduct had  
 19               knowledge or should have had knowledge that the  
 20               victim of the underlying offense was pregnant; or

21               “(ii) the defendant intended to cause the death  
 22               of, or bodily injury to, the unborn child.

23      “(C) If the person engaging in the conduct thereby  
 24      intentionally kills or attempts to kill the unborn child, that

1 person shall be punished as provided under section 1111,  
 2 1112, or 1113, as applicable, for intentionally killing or  
 3 attempting to kill a human being, instead of the penalties  
 4 that would otherwise apply under subparagraph (A).

5 “(D) Notwithstanding any other provision of law, the  
 6 death penalty shall not be imposed for an offense under  
 7 this section.

8 “(b) The provisions referred to in subsection (a) are  
 9 the following:

10 “(1) Sections 36, 37, 43, 111, 112, 113, 114,  
 11 115, 229, 242, 245, 247, 248, 351, 831, 844(d),  
 12 844(f), 844(h)(1), 844(i), 924(j), 930, 1111, 1112,  
 13 1113, 1114, 1116, 1118, 1119, 1120, 1121,  
 14 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505,  
 15 1512, 1513, 1751, 1864, 1951, 1952(a)(1)(B),  
 16 1952(a)(2)(B), 1952(a)(3)(B), 1958, 1959, 1992,  
 17 2113, 2114, 2116, 2118, 2119, 2191, 2231,  
 18 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332,  
 19 2332a, 2332b, 2340A, and 2441 of this title.

20 “(2) Section 408(e) of the Controlled Sub-  
 21 stances Act of 1970 (21 U.S.C. 848(e)).

22 “(3) Section 202 of the Atomic Energy Act of  
 23 1954 (42 U.S.C. 2283).

24 “(c) Subsection (a) does not permit prosecution—

1           “(1) for conduct relating to an abortion for  
 2           which the consent of the pregnant woman has been  
 3           obtained or for which such consent is implied by law  
 4           in a medical emergency;

5           “(2) for conduct relating to any medical treat-  
 6           ment of the pregnant woman or her unborn child; or

7           “(3) of any woman with respect to her unborn  
 8           child.

9           “(d) In this section—

10           “(1) the terms ‘child in utero’ and ‘child, who  
 11           is in utero’ mean a member of the species homo  
 12           sapiens, at any stage of development, who is carried  
 13           in the womb; and

14           “(2) the term ‘unborn child’ means a child in  
 15           utero.”.

16           (b) CLERICAL AMENDMENT.—The table of chapters  
 17           for part I of title 18, United States Code, is amended by  
 18           inserting after the item relating to chapter 90 the fol-  
 19           lowing:

**“90A. Causing death of or bodily injury to unborn child 1841”.**

20           **SEC. 3. MILITARY JUSTICE SYSTEM.**

21           (a) PROTECTION OF UNBORN CHILDREN.—Sub-  
 22           chapter X of chapter 47 of title 10, United States Code  
 23           (the Uniform Code of Military Justice), is amended by in-  
 24           serting after section 919 (article 119) the following:

1 **“§ 919a. Art. 119a. Causing death of or bodily injury**  
 2 **to unborn child**

3 “(a)(1) Any person subject to this chapter who en-  
 4 gages in conduct that violates any of the provisions of law  
 5 listed in subsection (b) and thereby causes the death of,  
 6 or bodily injury (as defined in section 1365 of title 18)  
 7 to, a child, who is in utero at the time the conduct takes  
 8 place, is guilty of a separate offense under this section.

9 “(2)(A) Except as otherwise provided in this para-  
 10 graph, the punishment for that separate offense is the  
 11 same as the punishment for that conduct under this chap-  
 12 ter had that injury or death occurred to the unborn child’s  
 13 mother.

14 “(B) An offense under this section does not require  
 15 proof that—

16 “(i) the person engaging in the conduct had  
 17 knowledge or should have had knowledge that the  
 18 victim of the underlying offense was pregnant; or

19 “(ii) the defendant intended to cause the death  
 20 of, or bodily injury to, the unborn child.

21 “(C) If the person engaging in the conduct thereby  
 22 intentionally kills or attempts to kill the unborn child, that  
 23 person shall be punished as provided under section 918,  
 24 919, or 880 of this title (article 118, 119, or 80), as appli-  
 25 cable, for intentionally killing or attempting to kill a

1 human being, instead of the penalties that would otherwise  
 2 apply under subparagraph (A).

3 “(D) Notwithstanding any other provision of law, the  
 4 death penalty shall not be imposed for an offense under  
 5 this section.

6 “(b) The provisions referred to in subsection (a) are  
 7 sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926,  
 8 and 928 of this title (articles 111, 118, 119(a), 119(b)(2),  
 9 120(a), 122, 124, 126, and 128).

10 “(c) Subsection (a) does not permit prosecution—

11 “(1) for conduct relating to an abortion for  
 12 which the consent of the pregnant woman has been  
 13 obtained or for which such consent is implied by law  
 14 in a medical emergency;

15 “(2) for conduct relating to any medical treat-  
 16 ment of the pregnant woman or her unborn child; or

17 “(3) of any woman with respect to her unborn  
 18 child.

19 “(d) In this section—

20 “(1) the terms ‘child in utero’ and ‘child, who  
 21 is in utero’ mean a member of the species homo  
 22 sapiens, at any stage of development, who is carried  
 23 in the womb; and

24 “(2) the term ‘unborn child’ means a child in  
 25 utero.”.

1       (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of subchapter X of chapter 47 of title  
3 10, United States Code (the Uniform Code of Military  
4 Justice), is amended by inserting after the item relating  
5 to section 919 the following:

“919a. 119a. Causing death of or bodily injury to unborn child.”.

○